

Good Faith Certificate

(Medical Malpractice Action)

A Guide to Resources in the Law Library

- "No civil action shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action has made a **reasonable inquiry** as permitted by the circumstances to determine that there are grounds for a **good faith belief** that there has been negligence in the care or treatment of the claimant." CONN. GEN. STATS. § 52-190a(a)(2003). [Emphasis added].
- "Our Supreme Court has held that the filing of a good faith certificate may be viewed as essential to the legal sufficiency of the plaintiff's complaint. Id.[*LeConche v. Elligers*, 215 Conn. 701, 711, 579 A.2d 1 (1990)] Thus, a plaintiff's failure to file a certificate 'renders the complaint subject to a motion to strike pursuant to Practice Book 152 (1) [now 10-39] for failure to state a claim upon which relief can be granted.' Id." *Yale University School of Medicine v. McCarthy*, 26 Conn. App. 497, 502, 602 A.2d 1040 (1992).
- **Purpose:** " The purpose of this precomplaint inquiry is to discourage would-be plaintiffs from filing unfounded lawsuits against health care providers and to assure the defendant that the plaintiff has a good faith belief in the defendant's negligence." Ibid., 501. .

Contents of this Chapter

§ 1 Certificate of Good Faith	2
§ 2 Automatic ninety-day extension of statute of limitations	5

Figures in this chapter

Figure 1 Certificate	4
Figure 2 Petition pursuant to section 52-190a(b) of the Connecticut General Statutes	7

Tables in this chapter

Table 1 Unreported Connecticut Cases	9
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Section 1

Certificate of Good Faith

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the certificate of good faith required in negligence actions against health care providers.

SEE ALSO:

- Automatic ninety-day extension of statute of limitations

DEFINITION :

- **Good Faith Certificate:** "The complaint or initial pleading shall contain a certificate, on a form prescribed by the rules of the superior court, of the attorney or party filing the action that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant." CONN. GEN. STATS. § 52-190a(a)(2003).
- **Good Faith:** "For purposes of this section, such good faith may be shown to exist if the claimant or his attorney has received a written opinion, which shall not be subject to discovery by any party except for questioning the validity of the certificate, of a similar health care provider as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith." Ibid..
- **Consequences of filing a false certificate:** "If the court determines after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative, shall impose upon the person who signed such certificate, a represented party or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney submitted the certificate." Ibid.
- **Health Care Provider:** "means any person, corporation, facility or institution licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his employment." CONN. GEN. STATS. § 52-184b(a)

(2003).

- "A motion to strike is the proper method of challenging a party's failure to include such a good faith certificate. See *LeConche v. Elligers*, 215 Conn. 701, 711, 579 A.2d 1 (1990)." *King v. Sultar*, 253 Conn. 429, 451, 754 A.2d 782 (2000).

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-184c. Standard of care in negligence actions against health care provider. Qualifications of expert witnesses.
 - § 52-190a. Prior reasonable inquiry and certificate of good faith required in negligence action against health care provider

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)
 - § 13-2. Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a shall not be subject to discovery except as provided in that section."

FORMS:

- 2 CONNECTICUT PRACTICE BOOK (1996).
[Form 101.13. Certificate](#)

CASES:

- *King v. Sultar*, 253 Conn. 429, 451, 754 A.2d 782 (2000). "By contrast, there is nothing in either the text of the statute or its underlying purpose to suggest that the legislature intended to require a would-be intervenor, under the facts of this case, to file a good faith certificate. In addition, the plaintiff conceded at oral argument that he had found no legislative history to support such a construction. We conclude that the purpose of § 52-190a has been fulfilled in this case because the plaintiff has filed a certificate of good faith, as required by § 52-190a, and the city asserts no new claims against the defendant, but merely seeks apportionment of the damages. Thus, we conclude that the city was not required to file a certificate of good faith pursuant to § 52-190a in order to intervene in this case."
- *Gabrielle v. Hospital Of St. Raphael*, 33 Conn. App. 378, 384, 635 A.2d 1232 (1994) cert. den. 228 Conn. 928. "The lack of a certificate of good faith is not a jurisdictional defect and thus does not deprive the court of subject matter jurisdiction Our cases explain that the failure to attach a certificate of good faith pursuant to 52-190a subjects the case to a motion to strike the complaint pursuant to Practice Book 152(1) [now 10-39] for failure to state a claim upon which relief can be granted, but that the defect is curable by a timely amendment filed pursuant to Practice Book 157 [now 10-44] or Practice Book 175 [now 10-59]."
- *LeConche v. Elligers*, 215 Conn. 701, 708, 579 A.2d 1 (1990). "The statute [Conn. Gen. Stats. § 52-190a], however, clearly requires a factual inquiry by the court regarding the sufficiency of the precomplaint investigation. That inquiry is to be undertaken after the completion of discovery."

TEXTS & TREATISES:

- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
Authors' Comments following Form 101.13 and 808.4
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
§ 16-3(d). Good faith certificate
- 2 DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW (1996).
§ 37:18. Requirement of good faith and certificate

LEGAL PERIODICALS:

- Thomas B. Scheffey, Article, *Defense: 'Guillotine' Law Needs Sharpening*, 30 CONNECTICUT LAW TRIBUNE 1 (APRIL 19, 2004) (NO. 16).

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Figure 1 Certificate

Form 101.13
Certificate

(Date)

I hereby certify that I have made a reasonable inquiry, as permitted by the circumstances, to determine whether there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. This inquiry has given rise to a good faith belief on my part that grounds exist for an action against defendant.

(Individual signature of attorney or party filing the action)

This certificate is required pursuant to Section 12 of P.A. 86-338.
(Adopted Sept. 17, 1986, to take effect Oct. 1, 1986)

Automatic Ninety-Day Extension of Statute of Limitations

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to automatic ninety-day extension of statute of limitations granted to allow the reasonable inquiry in negligence actions against health care providers.

SEE ALSO:

- [Certificate of Good Faith](#)

DEFINITION :

- **Ninety-day extension of statute of limitations:** "Upon petition to the clerk of the court where the action will be filed, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods." CONN. GEN. STATS. § 52-190a(b) (2003).
- **Statute of Limitations:** "No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by **malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, hospital or sanatorium**, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed." CONN. GEN. STATS. § 52-584 (2003). [Emphasis added].

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-190a(b). *Automatic ninety-day extension of the statute of limitations.*
 - § 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice
 - § 52-555. Actions for injuries resulting in death

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)

FORMS:

- 2 CONNECTICUT PRACTICE BOOK (1996).

RECORDS & BRIEFS:

- CONN. APPELLATE COURT RECORDS AND BRIEFS (March/April 1996), Girard v. Weiss, 43 Conn. App. 397, 682 A.2d 1078 (1996).

CASES:

- Bruttomesso v. N.E. Conn. Sexual Assault Crisis Serv., 242 Conn. 1, 2-3, 698 A.2d 795 (1997). "We conclude that because neither the defendant, Northeastern Connecticut Sexual Assault Crisis Services, Inc., a corporation organized and existing under the laws of the state of Connecticut, nor its employees is licensed or certified by the department of public health, the defendant does not fall within the statutory definition and, consequently, the plaintiffs cannot rely upon the extension of the statute of limitations provided by § 52-190a (b) to save their action, which was brought beyond the two year limitation of General Statutes § 52-584,[fn4] from being time barred."
- Girard v. Weiss, 43 Conn. App. 397, 418, 682 A.2d 1078 (1996). Section 52-190a (b) grants an automatic ninety day extension of the statute, making it clear that the ninety days is in addition to other tolling periods.
- Gabrielle v. Hospital OF St. Raphael, 33 Conn. App. 378, 385, 635 A.2d 1232 (1994). "Nothing in the language of 52-190a(b) supports a claim that the General Assembly intended to permit the use of a late filed petition for an automatic extension as a vehicle to revive an already expired statute of limitations. To reach such a result would require that we torture the clear language of both statutes."

TEXTS & TREATISES:

- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
Authors' Comments following Form 101.13 and 808.4
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
§ 16-3(d). Good faith certificate
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§ 37:18. Requirement of good faith and certificate

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Figure 2 Petition pursuant to § 52-190a(b) of the Connecticut General Statutes

ADRIEN GIRARD, EXECUTOR OF THE ESTATE OF SUSAN LONDON VS.	::	SUPERIOR COURT
	::	JUDICIAL DISTRICT OF HARTFORD NEW BRITAIN AT HARTFORD
JOSEPH WEISS, M.D., ET AL	::	APRIL 8, 1993

PETITION PURSUANT TO SECTION 52-190a(b)
OF THE CONNECTICUT GENERAL STATUTES

To the Clerk of the Superior Court for the District of Hartford-New Britain at Hartford.

The undersigned petitioner respectfully represents that:

1. Adrian Girard, Executor of the Estate of Susan Condon, that he has a cause of action against, Joseph Weiss, M.D. and Nasis Toor, M.D., for personal injuries to Susan Condon, which injuries were as a result of the negligence of the above-mentioned health care providers;

2. Adrian Girard, Executor of the Estate of Susan Condon, is required pursuant to Connecticut General Statutes Section 52-.90a(a) to file a certificate that he has made a reasonable inquiry, which inquiry gave rise to a good faith belief that grounds exist for an action against the above-mentioned health care providers;

3. At the present time Adrian Girard, Executor of the Estate of Susan Condon, is unable to comply with Connecticut General Statutes Section 52-190(a) as his attorney additional time to complete his investigation; and

4. Adrian Girard, Executor of the Estate of Susan Condom,, needs the ninety-day extension of the Statute of Limitations provided for pursuant to Connecticut General Statutes Section 52-190(b).

WHEREFORE, the undersigned prays for an extension of the Statute of Limitations for a period of ninety (90) days, pursuant to Connecticut General Statutes Section 52-190(b).

THE PETITIONER, Adrian Girard, Executor of the Estate of Susan Condon

Name

ORDER

Upon the foregoing petition praying an extension of the Statute of Limitations pursuant to Connecticut General Statutes Section 52-190(b), it appearing that said petition is in order;

Now therefore it is hereby ordered that, pursuant to Connecticut General Statutes Section 52-190(b), the Statute of Limitations is extended a period of ninety (90) days to allow the petitioner an opportunity to make a reasonable inquiry to determine whether or not grounds exist for a good faith belief that there has been negligence in the care or treatment of the petitioner by the health care providers, Joseph Weiss, M.D. and Nasim Toor, M.D.

Dated at Hartford, Connecticut this ____ day of April, 1993.

Clerk, Superior Court Judicial District of Hartford-New Britain at Hartford

Table 1 Unreported Connecticut Cases

Unreported Connecticut Cases	
<u>Villa v. Sport Hill Chiropractic</u> , No. 398722 (Nov. 28, 2003).	<p>The court need not determine whether a failure to make the reasonable inquiry required by § 52-190a(a) after being afforded an extension of time to do so under § 52-190a(b) vitiates the extension. This is because the defendant has failed to adduce any evidence that the plaintiff failed to make such a reasonable inquiry. As for the plaintiff's failure to attach the good faith certificate to his original complaint, that default was cured subsequent to the granting of the defendant's motion to strike when the plaintiff filed an amended complaint with the good faith certificate annexed. "The lack of a certificate of good faith is not a jurisdictional defect and thus does not deprive the court of subject matter jurisdiction. <i>LeConche v. Elligers</i>, [215 Conn. 701, 713, 579 A.2d 1 (1990)]. Our cases explain that the failure to attach a certificate of good faith pursuant to § 52-190a subjects the case to a motion to strike the complaint pursuant to Practice Book § 152(1) [now Practice Book § 10-39] for failure to state a claim upon which relief can be granted, but that the defect is curable by a timely amendment filed pursuant to Practice Book § 157 [now Practice Book § 10-44] or Practice Book § 175 [now Practice Book § 10-59]. <i>Id.</i>, 711; <i>Yale University School of Medicine v. McCarthy</i>, [26 Conn. App. 497, 502, 602 A.2d 1040 (1992)]." (Footnotes omitted.) <i>Gabrielle v. Hospital of St. Raphael</i>, 33 Conn. App. 378, 384, 635 A.2d 1232, cert. denied, 228 Conn. 928, 640 A.2d 115 (1994).</p> <p>Thus, the statute of limitations was extended from August 23, 1999 to November 23, 2002. Since service of process was made on the defendant on November 19, 2002, this action was brought within the three-year period prescribed by General Statutes § 52-584.</p>
<u>Weigold v. Patel</u> , No. X07-CV99 0071743S (Jul. 9, 2002), 2002 WL 1837916 (Conn. Super. 2002).	<p>Section 52-190a (b) allows a ninety day extension within which to file suit in order to complete the good faith inquiry required by § 52-190a (a). It is the defendants' contention that the plaintiff may not avail himself of that statute because this is not a medical malpractice action as neither of the defendants ever treated the plaintiff or the plaintiff's decedent. The court agrees.</p>
<u>Brittain v. Hospital of Saint Raphael</u> , No. CV98-00413933 (Apr. 25, 2001), 2001 WL 528124 (Conn. Super. 2001).	<p>The purpose of § 52-190a's good faith certificate is to evidence a plaintiff's good faith derived from a precomplaint inquiry. <i>LeConche v. Elligers</i>, 215 Conn. 701, 711 (1990). It serves as an assurance to a defendant that a plaintiff has in fact made a reasonable precomplaint inquiry leading to a good faith belief in the defendants' negligence. <i>Id.</i> The presence of the certificate is not a jurisdictional requirement. <i>Id.</i> Moreover, the statute, by its terms, permits the inquiry to be made by either the attorney or party filing the action. § 52-190a(a). The legislative purpose behind the statute is to discourage the filing of baseless lawsuits against health care providers. <i>Id.</i>, 710. Accordingly, the "essence of the thing to be accomplished" by § 52-190a is to mandate an appropriate precomplaint inquiry rather than the filing of the certificate itself. <i>Id.</i>, 710.</p>

	<p>Given this statutory purpose, the fact that the attorney's petition incorrectly named the administrator of Diane Kent's estate does not invalidate the petition. Nor does the attorney's precomplaint petition, which is permitted by § 52-190a, implicate the issues of standing raised by the Hospital. Standing concerns the authority of a party to get his or her complaint before the court. <i>Isaac v. Mount Sinai Hospital</i>, 4 3 Conn. App. 598, 601 (1985). While Karen Brittain's legal authority as administrator is crucial to her standing to bring the lawsuit filed on June 11, 1998, it is not a condition precedent to Attorney Lichtenstein's statutory authority to seek a ninety day extension of the statute of limitations to conduct an inquiry regarding the merits of a potential malpractice suit for alleged negligent treatment of Diane Kent.</p> <p>In addition, the fact that the Hospital was not named initially as a potential defendant likewise does not invalidate the extension petition. In <i>Lucid v. Arthritis Center of Conn.</i>, Superior Court judicial district of Waterbury at Waterbury, Docket No. 153804 (October 10, 2000, Wiese, J.), the court ruled that "[t]he attorney filing a petition for an extension of time need not name the health care provider against whom the attorney may expect to file an action. . . . Were the rule to be that an attorney seeking an extension . . . was required to name in his petition every defendant against whom his reasonable inquiry might indicate liability, there is little doubt but that the medical malpractice bar would, with Pavlovian predictability, name every health care provider anywhere in the geographical [area]. . . ." (Citation omitted.) <i>Lucid v. Arthritis Center of Conn.</i>, supra, Superior Court, Docket No. 153804, quoting <i>Falzone v. Hoos</i>, Superior Court, judicial district of New Haven at New Haven, Docket No. 368957 (March 27, 1998, Levin, J.) (21 Conn.L.Rptr. 587). This interpretation promotes the purpose of the statute, namely, to prevent frivolous and unfounded medical malpractice claims against health care providers.</p> <p>In summary, the court finds that pursuant to the order of the clerk granting Attorney Lichtenstein's petition, the statute of limitations for actions arising out of the death of Diane Kent was extended for ninety days. Accordingly, the action filed by Karen Brittain, Administratrix of the estate of Diane Kent was timely filed. The Hospital's motion for summary judgment as to Karen Brittain's claims is denied.</p>
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